



## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

**[Docket No. FWS–R3–ES–2013–0114]**

**[30120–1113–0000–C4]**

**RIN 1018–AZ90**

### **Endangered and Threatened Wildlife and Plants; Technical Corrections for Kirtland’s Warbler**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Direct final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the revised taxonomy of *Dendroica kirtlandii* (Kirtland’s warbler) under the Endangered Species Act of 1973, as

amended (Act). We are revising the List of Endangered and Threatened Wildlife to reflect the scientifically accepted taxonomy and nomenclature of this species. We revise the scientific name of the species as follows: *Setophaga kirtlandii* (= *D. kirtlandii*).

**DATES:** This rule is effective [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further action, unless significant adverse comment is received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If significant adverse comment is received, we will publish a timely withdrawal of the rule in the **Federal Register**.

**ADDRESSES:** You may submit comments by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS–R3–ES–2013–0114.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS–R3–ES–2013–0114; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

See **Public Comments** in **SUPPLEMENTARY INFORMATION** for more information about submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Barbara Hosler, Endangered Species Coordinator, U.S. Fish and Wildlife Service, Ecological Services Field Office, 2651 Coolidge Road, East Lansing, Michigan 44823; telephone 517–351–6326. Individuals

who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8337 for TTY (telephone typewriter or teletypewriter) assistance.

## **SUPPLEMENTARY INFORMATION:**

### **Purpose of This Rule**

The purpose of our direct final rule is to notify the public that we are revising the List of Endangered and Threatened Wildlife to reflect the scientifically accepted taxonomy and nomenclature of one bird species listed under section 4 of the Act (16 U.S.C. 1531 *et seq.*). The change to the List of Endangered and Threatened Wildlife (50 CFR 17.11(h)) reflects the most recently accepted scientific name in accordance with 50 CFR 17.11(b).

We are publishing this rule without a prior proposal because this is a noncontroversial action that, in the best interest of the regulated public, should be undertaken in as timely a manner as possible. This rule will be effective, as published in this document, on the effective date specified in **DATES**, unless we receive significant adverse comments on or before the comment due date specified in **DATES**. Significant adverse comments are comments that provide strong justification as to why our rule should not be adopted or why it should be changed.

If we receive significant adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date, and we will engage in the normal rulemaking process to promulgate these changes to 50 CFR 17.11.

## **Public Comments**

You may submit your comments and materials regarding our direct final rule by one of the methods listed in **ADDRESSES**. Please include sufficient information with your comment that allows us to verify any scientific or commercial information you include.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us. Before including your address, phone number, e-mail address, or other personal information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this direct final rule, will be available for public inspection on the Internet at <http://www.regulations.gov> or by appointment, during normal business hours at the U.S. Fish and Wildlife Service location listed above in **FOR FURTHER INFORMATION CONTACT**.

## **Background**

Section 17.11(b) of title 50 of the Code of Federal Regulations (CFR) requires us to use the most recently accepted scientific name of any species that we have determined to be an endangered or threatened species. Using the best available scientific information, our direct final rule documents a taxonomic change (scientific name) to

Kirtland's warbler (50 CFR 17.11(h)). The basis for the taxonomic change is supported by published studies in peer-reviewed journals. We revise the scientific name of this species under section 4 of the Act (16 U.S.C. 1531 *et seq.*) as follows: *Setophaga kirtlandii* (= *D. kirtlandii*). We make this change to the List of Endangered and Threatened Wildlife (50 CFR 17.11(h)) to reflect the most recently accepted scientific name in accordance with 50 CFR 17.11(b).

### **Taxonomic Classification**

#### *Setophaga kirtlandii*

The scientific name change of *Setophaga kirtlandii* (Kirtland's warbler) from *Dendroica kirtlandii* is supported by phylogenetic analyses of sequences of mitochondrial and nuclear DNA (Lovette et al. 2010), which indicated that all species formerly placed in *Dendroica*, as well as the hooded warbler (*Wilsonia citrine*), the northern parula (*Parula Americana*), and the tropical parula (*Parula pitiayumi*), form a clade with the American redstart (*Setophaga ruticilla*). The American Ornithologists Union Committee on Classification and Nomenclature—North and Middle America recognized that the generic name, *Setophaga*, had priority for this clade, renamed the Kirtland's warbler as *Setophaga kirtlandii*, and placed the species between the American redstart and the Cape May warbler (*Setophaga tigrina*) (Chesser et al. 2011). This taxonomic change is included in our most recent 5-year review for the species (USFWS 2012, p. 15). This species will continue to be listed as endangered, and no other aspect of the entry for this species in 50 CFR 17.11(h) will change as a result of this rule.

## **Required Determinations**

### *Paperwork Reduction Act of 1995*

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

### *National Environmental Policy Act*

We have determined that we do not need to prepare environmental assessments or environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted under section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (43 FR 49244).

### *Clarity of the Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;

- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To help us to revise this rule, your comments should be as specific as possible. For example, you should tell us the paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

### **References Cited**

A complete list of the referenced materials is available upon request at <http://www.regulations.gov> at Docket No. FWS–R3–ES–2013–0114 or from the U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

### **List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

### **Regulation Promulgation**

For the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**AUTHORITY:** 16. U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, by revising the entry for “Warbler (wood), Kirtland’s” under Birds to read as set forth below:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*

(h) \* \* \*



Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* * * *	* * *						
Warbler (wood), Kirtland's	<i>Setophaga kirtlandii</i> (= <i>Dendroica kirtlandii</i> )	U.S.A. (principally MI), Canada, West Indies—Bahama Islands	Entire	E	1, 3	NA	NA
* * * *	* * *						

\* \* \* \*

Dated: November 1, 2013

Signed: Rowan W. Gould

Acting Director,  
U.S. Fish and Wildlife Service

**Billing Code 4310–55**

